

CAA Non-Executive Board Members:

Mr David Gray
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30 November 2017

Dear Sirs

Decision (ORS 8 No.45) by the Civil Aviation Authority (CAA) in relation to the Safety & Airspace Regulation Group (SARG)'s proposal to revoke the Air Operator Certificate and Continuing Airworthiness Management Organisation Approval of Monarch Airlines Limited (MAL)

1. I refer to the SARG Notice dated 2 October 2017 (**SARG Notice**) containing its proposal to revoke MAL's Air Operator Certificate (**AOC**) and Continuing Airworthiness Management Organisation Approval (**CAMO**) and the 19 October 2017 SARG Supplemental Notice to MAL (**Supplemental Notice**) adopting supplementary grounds relied on by SARG for suspending or revoking the AOC and CAMO.
2. The hearing in relation to this request took place on 28 November 2017 at CAA House in London. The hearing lasted from 11.10am until around 3.00pm and both sides had the opportunity to make submissions, present evidence and ask questions of the other side.
3. The CAA Panel is comprised of Mr David Gray (Chair) and Mr Graham Ward CBE, both appointed by the Secretary of State for Transport as Non-Executive Members of the Board of the CAA.

The question to be decided by the Panel

4. The question to be decided by the Panel is whether, in the light of the evidence and the relevant law, MAL's AOC (reference GBR 0365) and CAMO (reference UK.MG.0127) should, pursuant to Regulation 6 of the Civil Aviation Authority Regulations 1991, be revoked and, if not, whether the AOC and CAMO should be suspended.

The evidence

5. In reaching its decision, the CAA Panel has carefully considered the evidence and submissions set out in (a) to (c) below.
 - a. Documents submitted by MAL and SARG in preparation for the hearing (**the Hearing Bundle**);

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- b. Oral evidence and submissions presented at the hearing by MAL and SARG, which is set out in the agreed transcript of the hearing; and
- c. 'Teaser' document handed up at the hearing by MAL.

The relevant legal framework

- 6. The relevant legal framework is set out in:
 - a. Regulation (EC) No 216/2008 (**the Basic Regulation**).
 - b. Regulation (EU) No 965/2014 (**the Air Operations Regulation**).
 - c. Regulation (EU) No 1321/2014 (**the CAMO Regulation**).
 - d. Regulation 6 of the Civil Aviation Authority Regulations 1991, which requires the CAA to serve notice of a proposal to revoke a certificate or approval upon the holder and provides the holder with the right to request that the case be decided by a member of the CAA.
 - e. The parties also made reference to:
 - i. Regulation (EC) No 1008/2008 (the Licensing Regulation);
 - ii. European Aviation Safety Agency (EASA) Acceptable Means of Compliance (AMC and Guidance Material (GM) to Part-ARO); and
 - iii. CAP 789 Requirements and Guidance Material for Operators.

Agreed Facts and Issues

- 7. The CAA has granted the following certificates/approvals to Monarch Airlines Limited:
 - (a) Air Operator Certificate GB0365;
 - (b) Operation Specification;
 - (c) Operations Approval; and
 - (d) Continuing Airworthiness Management Organisation UK.MG.0127.
- 8. MAL went into administration on 2 October 2017.
- 9. The witness statement of Mr Andrew Swaffield presented to the Court by MAL and the Joint Administrators in support of the administration stated that:

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"87. I am advised that the statutory purposes of administration are, in relation to each of the Administration Companies:

- (a) the rescue of the Administration Company as a going concern;
- (b) achieving a better result for the Administration Company's creditors as a whole than would be the case in the liquidation of that Administration Company; or
- (c) realising the property of that Administration Company for the benefit of one or more of its secured or preferential creditors.

88. The purpose of the proposed administration in each case is to achieve a better result for the Administration Companies' respective creditors than would likely be achieved if in each case the Administration Companies were wound-up (without first being in administration). The secondary purpose of the proposed administrations is to realise property in order to make a distribution to some of the Administration Companies' secured creditors."

10. The witness statement of Mr Blair Nimmo (Joint Administrator) presented to the Court at the same time by MAL and the joint administrators in support of the administration order stated that:

"16. As matters currently stand, and based on information provided by the Administration Companies, we do not consider it likely that it will be possible to rescue any of the Administration Companies as a going concern. During the administration none of the Administration Companies will operate or book any further flights or holidays and, due to safety reasons, it will not be appropriate for the Proposed Administrators to continue to operate the MAL airline business. However, I and the other Proposed Administrators are satisfied that the purpose of an administration order for each of the Administration Companies to which they are proposed to be appointed will be achieved in that it will be possible to realise property in order to make a distribution to one or more of the secured creditors. In respect of the Administration Companies we believe for the reasons highlighted below that it will also be possible to achieve a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration)".

11. On the same day, by letter from the Joint Administrators to the CAA, the relevant companies in administration, including MAL, provided various undertakings. These were that, unless otherwise agreed in writing with the CAA and subject to their ability to provide certain services in the context of repatriation, during the course of the administration of MAL, the Joint Administrators would not:

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- (a) *offer or provide services to consumers other than as necessary or desirable in the ordinary course of the administration, including taking bookings for flights or other travel accommodation;*
 - (b) *request or accept payments of any kind from consumers in respect of balances for existing bookings (unless the travel or holiday which was booked has already been completed) or new bookings; and*
 - (c) *provide flight accommodation (as defined in the Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012) to any person.*
12. The CAA's Safety and Airspace Regulation Group wrote to the Joint Administrators on the same day:
- (a) providing formal notice of its proposal to revoke MAL's AOC, Operation Specification, Operations Approval and CAMO (**SARG Proposal Letter**). Appended to the SARG Proposal Letter was an 'Oversight Report' (**the Oversight Report**), identifying the findings that led SARG to this proposal, including two 'Level 1' findings (namely a breach of ORO.GEN.210(a) in respect of the AOC and a breach of M.A.706(a) in respect of the CAMO) (**the Level 1 Findings**). Each Level 1 Finding was accorded a 'Target Date' for rectification of 16 October 2017;
 - (b) provisionally suspending the AOC and CAMO pursuant to Article 254(1) of the Air Navigation Order 2016, pending consideration of the case
13. By letter dated 3 October 2017 from the Joint Administrators to SARG, it was requested that the AOC be suspended rather than revoked. SARG sought clarification, by a letter dated 5 October 2017, that the Joint Administrators were thereby requesting a review of SARG's proposal. The Joint Administrators responded on 13 October 2017, confirming that they were requesting a review of the proposal to revoke the AOC and CAMO approvals.
14. By a letter dated 23 October 2017, the CAA's Head of Flight Operations raised with the Joint Administrators that the target date set in the Oversight Report for the Level 1 Findings had passed without any response from them, and asking for clarification regarding how MAL intended to proceed in relation to these two findings.
15. On 26 October 2017, the Joint Administrators replied by letter to explain that, given the pending review of the AOC, *"we do not feel it is necessary or appropriate to submit an action plan addressing the non-compliances set out in the Oversight Report. We will of course respond to the Oversight Report as appropriate at the outcome of the hearing and on final determination by the CAA of the status of MAL's AOC at that time"*.
16. On 27 October 2017, SARG sent to MAL its Brief for a Regulation 6 Review. It identified the reasons why it invited the CAA Panel to revoke the AOC and CAMO, namely: in respect of the AOC (i) failure to comply with ORO.GEN.210(a) and ORO.GEN.150(c); and (ii) failure to demonstrate continued compliance with the requirements applicable for the issue of an AOC, namely ORO.AOC.100(b)(2) and (c)(3); and in respect of the CAMO (iii) failure to comply with M.A.706(a) and 716(c).

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17. MAL responded to the SARG Brief for a Regulation 6 Review on Friday 17 November setting out its submissions as to why it believes a revocation of the AOC and CAMO is unnecessary and inappropriate.
18. MAL has retained Mr Nils Christy in its employment for the purpose of compliance with ORO.GEN.210(a). MAL has three historically retained pilots, (one of whom is Mr Nils Christy) who all continue to hold valid pilot licences issued by the CAA and who are in addition AOC postholders.
19. All the aircraft operated by MAL on the day prior to its entry into administration are in the process of being repossessed by lessors.
20. By a decision made on 9 November 2017, the CAA Panel decided to revoke MAL's Operating Licence. The Panel found that the CAA was obliged to suspend or revoke MAL's OL pursuant to Article 9(1) and Article 3(2) of Regulation 1008/2008. The Panel decided to revoke, rather than suspend, MAL's Operating Licence on the basis that *"there is no detectable prospect of MAL being in a position within any foreseeable period of time to need an [Operating Licence] in order to operate as an air carrier"* (at §42).
21. MAL served a notice of appeal against the decision on the Secretary of State for Transport and the CAA pursuant to Regulation 9(1) of the Operation of Air Services in the Community Regulations 2009 within the 14 day period specified in Schedule 2 thereto.
22. The revocation or suspension of the AOC is to be considered by reference to Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations Regulation (EC) No 216/2008 of the European Parliament and of the Council (i.e. the Air Operations Regulation).
23. The revocation and suspension of the CAMO is to be considered by reference to Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks (i.e. the CAMO Regulation).

Update as to the progress of the administration

24. On 24 November 2017 the administrators published their proposals for the company. This document referred to the Monarch Group having three principal realisable assets: cash in the bank, the take-off and landing slots, and the Group's engineering business which continued to trade and was not in any insolvency process. There was expected to be a shortfall to MAL's secured creditors and the estimated maximum dividend to unsecured creditors would be 0.13 pence in the pound. The administrators concluded that it was difficult to determine the likely exit route from the administration at the time of writing but that they were looking into the possibility of a Company Voluntary Arrangement. In the alternative they anticipated that the most likely route was dissolution.
25. The proposals document concluded as follows:

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“with there being no party currently willing to buy the airline in whole or in part, the Joint Administrators have not to date identified any viable means of achieving the objective in paragraph 3(1)(a) of the Insolvency Act 1986 [i.e. paragraph 3(1)(a) of Schedule B1 to the Act] (a rescue of the Company as a going concern) and therefore the objective of the administration most likely to be achieved at this time is to achieve a better result for the creditors as a whole than would be likely if the Company were wound up, in accordance with paragraph 3(1)(b). However the administrators remain open to considering any offers for the Company or business and are marketing these assets on that basis. Should a viable proposal be received such that a rescue of the Company as a going concern becomes probable, we will inform creditors in the appropriate way at that time..”

26. Shortly before the hearing MAL also provided details of a ‘teaser’ document it had issued on 27 November 2017 seeking expressions of interest in relation to a potential purchase of MAL’s shares. The document made it clear that MAL was not trading and did not hold any aircraft but referred to a number of “strategically important tangible and intangible assets including the OL and the AOC”. In a subsequent section headed “Key Potential Assets of the Company” reference was made to “valid licenses” which “may include AOC and OL”.

Submissions of SARG

Starting point

27. SARG’s submissions started with the following provisions of the Basic Regulation:
- a. Article 1(b) under the heading “Scope”, states that the Regulation shall apply to *“personnel and organisations involved in the operation of aircraft”*.
 - b. “continuing oversight” is defined in Article 3(a) to mean *“the tasks to be conducted to verify that the conditions under which a certificate has been granted continue to be fulfilled at any time during its period of validity, as well as the taking of any safeguard measure”*, in other words that the oversight to be exercised by the CAA was oversight of the operation of the business as set out in the AOC.
 - c. “operator” is defined in Article 3(h) as *“any legal or natural person operating or proposing to operate one or more aircraft...”*.
 - d. “commercial operation” is defined in Article 3(i) as *“any operation of an aircraft in return for remuneration or other valuable consideration, which is available to the public or, when not made available to the public, which is performed under a contract between an operator and a customer, where the latter has no control over the operator”*.
 - e. Article 8(2), under the heading “Air Operations”, stated that *“unless otherwise determined in the implementing rules, operators engaged in commercial operations shall demonstrate their capability and means of discharging the responsibilities associated with their privileges. These capabilities and means shall be recognised through the issuance of a certificate. The privileges granted to the operator and the scope of the operations shall be specified in the certificate”*.

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